IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of Case

Criminal Appeal No. 1228 of 2001 **Decided on: Nov. 18, 2006**
(Old No. 1418 of 1990)

A.F.R. (Approved for Reporting)
Not approved for reporting

Date 18.11.2006

(Initial of Judge)

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1228 of 2001
(Old No. 1418 of 1990)

Dr. (Major) Ramesh
S/o Sri Ganesh Prasad
R/o Dehradun Road, Rishikesh,
District Dehradun.

…… Appellant

Versus

The State …… Respondent

Mr. Munish Bhardwaj. Amicus Curiae for the appellant.
Mr. Lalit Verma, Brief Holder for the State.

Hon'ble Prafulla C. Pant, J.

The criminal appeal, preferred under Section 374 (2) of the Code of Criminal Procedrue, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 16th July, 1990, passed by learned 1st Additional Sessions Judge, Dehradun, in Sessions Trail No. 96 of 1986, whereby appellant Dr. (Major) Ramesh has been convicted under Section 307 of the Indian Penal Code, 1860 (for brevity hereinafter referred as I.P.C.) and sentenced to undergo rigorous imprisonment for a period of three years and also to pay fine of Rs. 5,000/-, in default of payment of which, the convict was directed to undergo simple imprisonment of one year.

2) Heard learned counsel for the parties and perused the entire record.

3) Prosecution story, in brief, is that P.W. 1 Mohan Singh is real brother of injured Kishan Singh (P.W. 2). Sumal Lata (D.W. 2) is sister of Mohan Singh and Kishan Singh. All the three are residents of Dehradun Road, Rishikesh. Accused/ appellant Dr. (Major) Ramesh had friendly relation earlier with father of the above three, but later, it is alleged by prosecution that Dr. (Major) Ramesh developed illicit relations with Suman Lata. This soured relations between Mohan Singh and Kishan Singh, on one hand, and Dr. (Major) Ramesh, on the other. On 23.04.1986, at about 10:30 P.M., when Mohan Singh and Kishan Singh were returning from one Saklani Ji's house, Dr. (Major) Ramesh (appellant) and his three associates namely, Sanjay Sharma, Ajay Kumar and Mahesh Srivastava, met the two brothers and started hurling abuses at them. In the quarrel Dr. (Major) Ramesh took out his revolver and fired twice at Kishan Singh. Consequently, Kishan Singh got injured. However, one shot missed the target. P.W. 1 Mohan Singh lodged the First Information Report (Ext. A –1) with police station Rishikesh, at about 11:10 P.M., and took the injured to Doon Hospital, Dehradun, for treatment. A crime No. 117 for 1986 was registered at the police station Rishikesh, against the accused Dr. (Major) Ramesh and three others, relating to offences punishable under Section 307 / 326 read with Section 34 of I.P.C. After interrogation of the witnesses, and collecting evidence, a charge sheet was filed by the Investigating Officer against the accused persons, namely Dr. (Major) Ramesh (appellant), Sanjay Sharma, Ajay Kumar and Mahesh Srivastava, relating to offences

punishable under Section 307/ 326 read with Section 34 for I.P.C.

4) It appears, that the Magistrate on receipt of the charge sheet, after giving necessary copies to the accused persons, as required under Section 207 for Cr.P.C., committed the case to the court of Sessions, for trial. The sessions trail appears to have been transferred to the court of 1st Additional Sessions Judge, Dehradun. After hearing the prosecution and the defence, a charge of offence punishable under Section 307 of I.P.C. was framed against the accused / appellant Dr. (Major) Ramesh, and a charge of offence punishable under Section 307 read with Section 34 of I.P.C. was framed against rest of the accused, namely Sanjay Sharma, Ajay Kumar and Mahesh Srivastava. All the accused pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Mohan Singh (complainant); P.W. 2 Kishan Singh (injured); P.W. 3 Mohan Singh Raka (scribe of the report); P.W. 4 Pramod Kumar (eyewitnesses); P.W.5 Dr. S.S. Chauhan (who) medically examined injured Kishan Singh) and P.W. 6 Sub Inspector Babu Ram Yadav (Investigating Officer). The oral and documentary evidence was put to the accused by the trial court in reply to which the accused / appellant Dr. (Major) Ramesh alleged the same to be false, <u>but admitted that he did fire shots from his revolver, in self-defence.</u> On being given opportunity, defence got examined D. W. 1 Gurbux Singh, real uncle of complainant and injured, and D.W. 2 Suman Lata, real sister of the two. The trial court, after hearing the parties found that the charge of offence

punishable under Section 307 of I.P.C. as against Dr. (Major) Ramesh was found proved, and the charge as against rest of the three accused, was not found proved. Accordingly, it acquitted Sanjay Shamra, Ajay Kumar and Mahesh Srivastava, but convicted the accused Dr. (Major) Ramesh, in respect of offence punishable under Section 307 of I.P.C. After hearing him on sentence, the trial court sentenced Dr. (Major) Ramesh to rigorous imprisonment for a period of three years and also to pay fine of Rs. 5,000/-, in default of payment of which, the convict was directed to undergo simple imprisonment for one year. Aggrieved by said judgment and order dated 16.07.1990, passed in Sessions Trail No. 96 of 1986, this appeal was filed by the accused / appellant before the Allahabad High Court, from where it has been received by transfer to this Court, for its disposal.

5) Even after notices being sent by this Court to the appellant, since he did not respond, this Court appointed Mr. Munish Bhardwaj, Amicus Curiae to assist the Court on behalf of the appellant.

6) Before further discussions, it is pertinent to mention here, the injuries found on the person of injured Kishan Singh, recorded by the Medical Officer in the night of 23.04.1986, which are mentioned in Ext. A –15. The injuries recorded by the Medical Officer, are as under:

i) ***One oval lacerated wound 1 cm in diameter (1 cm X 1 cm X not probed) edges inverted, irregular. No blackening, scorching, tattooing***

present around the wound. Bleeding from the wound present. It is situated on right upper portion of front chest, 3 cm below mid clavicular line.

ii) A lacerated wound 1.25 cm X 1.25 cm X bone deep on bridge of nose, deformity of bridge of nose present. Fresh Bleeding present.

The Medical Officer kept the injury No. 1 under observation and advised X-ray. The X-ray of chest of Kishan Singh, which was taken on 24.04.1996, in Doon Hospital, Dehradun, shows that a radio opaque foreign body shadow of metallic density seen on the back of chest near clavicular joint. As such, the injury report corroborates the prosecution story, that a firearm injury was caused to Kishan Singh.

7) It is also pertinent to mention her, that Ballistic Expert's repot (Ext. A –14) also corroborates the fact that the cartridges EC 1 and EC 2 collected during the interrogation by the police, on examination with revolver No. 30279, recovered from appellant Dr. (Major) Ramesh, it was found that the said shots were fired from the above revolver.

8) P.W. 1 Mohan Singh, complainant, has stated that appellant Dr. (Major) Ramesh had enmity with him and his brother Kishan Singh. He further stated that there was family dispute between the two brothers and their sister Suman Lata, and accused Dr. (Major) Ramesh used to side Suman Lata. On 23.04.1986, the witness states that he along

with his brother Kishan Singh was returning from one Saklani Ji's house, when he met Dr. (Major) Ramesh and his three associates. They had a quarrel with Dr. (Major) Ramesh, who shot two fires from his revolver, and one of the fire hit Kishan Singh.

9) P.W. 2 Kishan Singh (injured) has stated that on the day of incident, when he was coming with his brother Mohan Singh, accused Dr. (Major) Ramesh along with three others met them and they had a quarrel, on this, Dr. (Major) Ramesh shot fires from the revolver and one of the fire hit him.

10) The evidence of the above to witnesses gets corroboration not only from the medical evidence and the report of the Ballistic Expert, but also from the evidence of P.W. 4 Pramod Kumar.

11) The job of the prosecution was made further easy by the accused by taking plea of self-defence. Section 105 of the Indian Evidence Act, 1872, provides that when a person is accused of any offence, the burden to prove the existence of circumstances, bringing the case within any general exception in I.P.C. is on the person who takes plea of such exception. It appears that in an attempt to discharge the burden the defence got examined D.W. 1 Gurbux Singh, uncle of the complainant and D.W. 2 Suman Lata, sister of the complainant and the injured. However, these two witnesses have stated nothing regarding actual incident, what they have stated is this that there was no illicit

relationship between Suman Lata and the accused/appellant Dr. (Major) Remesh.

12) Learned Amicus Curiae argued before this Court that the act of the appellant is bonafide and he had no intention to commit murder of Kishan Singh. In this connection, he argued that after the incident, the appellant had himself gone to the police station and informed about the incident. it is contended that it is only when the accused found that he may be attacked by complainant Mohan Singh and injured Kishan Singh, that made him to fire shots in order to save himself. My attention was drawn to the statement of D.W. 2 Suman Lata. She has stated at the end of her examination-in-chief that on 24.03.1986, she was unwell and 'Doctor Sahib' came to see her. When Dr. Sahib Went out, soon after she heard sound of firing of shots. She came to know later on that Dr. (Major) Ramesh has been arrested in that very night. The testimony of D.W. 2 Suman Lata, sister of the complainant, does indicate that the accused / appellant was returning back from her house as she was unwell and there was no occasion or motive with him to have attempted to commit murder of Kishan Singh, as such, the defence theory cannot be disbelieved, to the extent that on seeing Mohan Singh and Kishan Singh, the accused Dr. (Major) Ramesh thought that he is likely to be attacked by the two, as they had some quarrel, as he came to attend the sister of the two brothers who were having enmity with their sister. The conduct of Dr.(Major) Ramesh, after the incident and before the incident does not rule out the possibility of firing shot by him in self-defence. But, still, it is evident and clear from the evidence on record that the accused / appellant Dr.

(Major) Ramesh had exceeded the right of self-defence by firing two shots, as narrated by the prosecution witnesses. A single fire in air could have served the purpose of self-defence. Even otherwise, a fire on leg or non vital part could also have served the purpose of self-defence. But, causing injury on the vital part by firing twice, one of which missed the injured, definitely, proves the case of attempt to murder culpable homicide not amounting to murder, which is an offence punishable under Section 308 of I.P.C.

13) In the above circumstances, after going through the evidence both the sides, recorded by the trail court, this Court is of the view that what comes out from the evidence on record, is that the offence punishable under Section 308 of I.P.C. is proved against the accused / appellant Dr. (Major) Ramesh, and not an offence punishable under Section 307 of I.P.C. The reasons for acquitting the other accused person, mentioned by the trail court, are just and proper. Accused Sanjay Sharma and Mahesh Srivastava having residents of Allahabad and have come to Dr. (Major) Ramesh, and they could have no motive or intention to commit any crime in common intention with the accused / appellant. Otherwise also, there is no evidence on record to indicate that there had been the prior meeting of mind of Dr. (Major) Ramesh with either of the three.

14) For the reasons as discussed above, this appeal deserves to be allowed partly. The accused / appellant Dr. (Major) Ramesh Deserves to be acquitted of the charge of

offence punishable under Section 307 of I.P.C., but he is liable to be convicted under Section 308 of I.P.C. After hearing the parties, this Court is of the view that the sentence of rigorous imprisonment for a period of one year, if awarded to the accused / appellant, would meet the ends of justice. Therefore, the impugned judgment and order dated 16.07.1990, passed by the trial court is set aside partly, to the extent, as above. Dr. (Major) Ramesh is acquitted of the charge of offence punishable under Section 307 of I.P.C. He is convicted for having committed the offence punishable under Section 308 of I.P.C. and is sentenced to rigorous imprisonment for a period of one year. The accused / appellant Dr. (Major) Ramesh is on bail. His bail is cancelled. The trial court shall take him into custody to make him serve out the sentenced, awarded against him, as above.

(Prafulla C. Pant, J.)

Dt. November 18, 2006.
H.Negi